



Conservation Law Foundation

November 1, 2004

Interagency Ocean Policy Group
White House Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503

Via e-mail: finalreport.comments@noaa.gov

Re: Public Comment on *Final Report: An Ocean Blueprint for the 21st Century (Pre-Publication Copy)*

Dear Members of the Interagency Ocean Policy Group:

On behalf of the Conservation Law Foundation (CLF) I am submitting comments on the changes made to the *Preliminary Report of the U.S. Commission on Ocean Policy, Governor's Draft* (April 2004), which appear in the Commission's *Final Report: An Ocean Blueprint for the 21st Century (Pre-Publication Copy)*, September 2004. The comments which follow focus on Chapters 1-3 (Recognizing Ocean Assets and Challenges, Understanding the Past to Shape a New National Ocean Policy, Setting the Nation's Sights), Chapters 4-7 (Enhancing Ocean Leadership and Coordination, Advancing a Regional Approach, Coordinating Management in Federal Waters, Strengthening the Federal Agency Structure) and Chapter 19 (Achieving Sustainable Fisheries).

The U.S. Commission on Ocean Policy's *Final Report*, like the draft upon which it is based, clearly illustrates the many threats and stresses that the nation's coastal and ocean resources face. As the report documents time and again, the marine and Great Lakes environments face serious risks. Indeed, they are reeling from federally-subsidized development of coastal lands that destroys habitat and generates pollution, the problems of bycatch and diminishing fisheries, tangled state and federal bureaucracies that result in fractured resource management – and all the problems in between. The Commission paints a clear picture of an ocean management system that is not working, with serious consequences for marine and Great Lakes resources and the economies that depend on them.

Several changes were made to the *Final Report* that resulted in stronger recommendations, and a more accurate depiction of the problems our coasts and oceans face. When coupled with the original elements of the report that called for prompt, effective action, these changes have resulted in an even more compelling case for action. The Administration has a unique opportunity to be a force of change for the oceans. Failing to act on the Commission's recommendations would result

62 Summer Street, Boston, Massachusetts 02110-1016 • Phone: 617-350-0990 • Fax: 617-350-4030 • www.clf.org

MAINE: 120 Tillson Avenue, Suite 202, Rockland, Maine 04841-3416 • 207-594-8107 • Fax: 207-596-7706

NEW HAMPSHIRE: 27 North Main Street, Concord, New Hampshire 03301-4930 • 603-225-3060 • Fax: 603-225-3059

RHODE ISLAND: 69 Washington Street, Providence, Rhode Island 02903-1726 • 401-323-7608 • Fax: 401-351-0118

VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • 802-223-5992 • Fax: 802-223-0060

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in escalating peril to the marine and Great Lakes environments. The impacts would be felt for generations to come.

However, along with the many good improvements to the *Final Report*, there are also changes that we do not support. These changes are not consistent with the general tone of the report, which advocates improved management, strengthened protection, and restoration of marine resources. We are hopeful that as the Administration and Congress take steps to address the problems documented in the *Final Report*, the focus will be maintained on the majority of recommendations whose implementation would result in healthier oceans and Great Lakes, stronger economies, and a long-lasting enjoyment of these irreplaceable resources.

Chapters 1-3, Recognizing Ocean Assets and Challenges, Understanding the Past to Shape a New National Ocean Policy, Setting the Nation's Sights.

We welcome the new discussion of climate change and its potential impacts on the oceans in Chapter 3 (p. 39).

We would like to point to additional elements of Part I that we particularly support:

- The call for a comprehensive national policy and a coordinated management structure.
- This section of the report contains a good discussion of the importance of the oceans, and their multiple resources and uses. It identifies the problems that the oceans face very well.
- There is a call for careful stewardship and immediate action, with a sense of urgency.
- It cites the failure to create an independent NOAA, as was recommended by the Stratton Commission, and the consequent proliferation of single-purpose statutes, fragmentation and the dissatisfaction it breeds. It notes the growing consensus to do something about these problems.
- There is a good vision statement on pp. 31-32.
- Overall, this section contains good overarching principles, with the exception of the definition of the precautionary approach, which sets too high a threshold for when precaution is called for (namely, the threat must be of "serious or irreversible damage," which is much too high a standard.)

There are elements of this section that we would like to see the Administration take a stronger leadership role on than is provided for in the *Final Report*. In particular, the Administration should:

- Identify as the fundamental goal of ocean management the protection, maintenance, and restoration of ocean ecosystem health, including biodiversity.
- Call for a National Ocean Policy Act to guide federal agencies and the National Ocean Council.
- Support and work to establish a system of conservation areas in the sea just as we have on land. More than 1,000 scientists worldwide have called for creation of Marine Protected Areas.
- Support the creation of a separate oceans agency, and regional ecosystem councils with the authority to create regional ecosystem plans, set measurable goals and be accountable.

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Chapters 4-7, Enhancing Ocean Leadership and Coordination, Advancing a Regional Approach, Coordinating Management in Federal Waters, Strengthening the Federal Agency Structure.

Overall, we are disturbed by some of the changes made to this section of the report. These changes include the following:

- In Chapter 4, Recommendation 4-3 on ecosystem-based management is weakened by no longer requiring agencies to incorporate the preservation of marine biodiversity in their management programs.
- Part II also makes several changes to the ways in which regional governance was proposed in the draft report. These changes could present problems. For example, there is no longer a description of how a regional information program should be administered. In addition, gone is the discussion of the need for adequate funding of regional information programs.
- Recommendation 7-4 in Chapter 7 proposes that Congress authorize the President to propose structural reorganization of federal departments and agencies but Congress is precluded from amending the President's proposal.

A stronger ocean policy framework is articulated in H.R. 4900, OCEANS-21, which we urge the Administration to support. It includes a national ocean policy with enforceable standards that “protects, maintains, and restores marine ecosystem health,” a national oceans council, a national oceans advisor, a council of advisors on ocean policy, a NOAA organic act, and a regional approach that has councils with shared federal-state participation in planning for, and implementation of, a regional management strategy.

Chapter 19, Achieving Sustainable Fisheries

Overall we support many of the conclusions and recommendations in this chapter including, in particular, those that:

- Improve the science upon which management decisions are based by: (a) insulating scientific advice from political manipulation by improving the independence of the Councils' Science and Statistics Committees (SSCs); (b) setting harvest limits at or below the recommendations of the SSCs; and (c) recommending that the composition of regional councils be broadened to include representatives of the general public.
- Explore the use of “dedicated access privileges,” such as individual fishing quotas, community quotas, cooperatives, and territorial or area access programs, consistent with national guidelines to mitigate potential problems that can result from granting such privileges.
- Recognize the need to better understand and address the effects of recreational fishing.
- Create regional bycatch reduction plans which address ecosystem impacts of bycatch.
- Recognize the need to move toward ecosystem-based management, but acknowledges the need for immediate action and recommends important, specific reforms to improve fisheries management.

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- Make a compelling case that overfishing, habitat loss, and bycatch have had major ecological, economic and social impacts that require significant management reforms.

We note with concern several weakening changes to the *Final Report*, as well:

- It contains no recommendations regarding elimination of conflicts of interest on Regional Fisheries Management Councils. The final report's recommendation to separate science and allocation decisions is somewhat weaker than the draft report version. Rather than requiring Councils to set harvest limits at or below allowable biological catch as specified by the SSC, the final report notes only that Councils should set harvest limits at or below allowable biological catch. This seems to imply that such a decision would be left to the discretion of the individual Councils. This would only exacerbate the tendency towards overfishing which characterizes several regional fishery management councils.
- There is inadequate emphasis on the need for fisheries observers to collect data on bycatch.
- There are no specific recommendations to promote ecosystem-based management, and address the need for greater accountability of recreational fisheries.
- The *Final Report* includes no specific recommendations to enhance Coast Guard fisheries law enforcement, the only federal law enforcement agency with the capability to enforce federal fisheries law at sea.
- There are no recommendations to improve habitat protection; rather the Commission concentrates on refining essential fish habitat designations which could result in reducing the size of EFH, thus constraining the regional council's ability to reduce or prevent threats to EFH presented by projects under the purview of other agencies.
- The *Final Report* contains no specific recommendation to adopt a precautionary approach to management.

We urge the Administration to support a preferable approach to fisheries management, which is contained in H.R. 4706, The Fisheries Management Reform Act of 2004 (H.R. 4706). This bill would implement the regional fishery management council reforms proposed by the U.S. Commission and the Pew Oceans Commission, and addresses several key issues including: (a) separating conservation and allocation decisions; (b) broadening the representation on Fishery Management Councils; (c) reducing financial conflicts of interest on RFMCs; and (d) training new council members.

CLF greatly appreciates the opportunity to comment on the *Final Report: An Ocean Blueprint for the 21st Century (Pre-Publication)* and urge the Administration and Congress to act swiftly on these recommendations.

Sincerely,

Priscilla M. Brooks, Ph.D.
Director, Marine Conservation Program